



## **MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Zermeno, followed by the Pledge of Allegiance.

## **ROLL CALL**

Present: COMMISSIONERS Bogue, McKillop, Sacks  
CHAIRPERSON Zermeno  
Absent: COMMISSIONER Fraas, Thnay, One Vacancy

Staff Members Present: Anderly, Conneely, Emura, Koonze, Looney, Lens, Pearson,  
Patenaude

General Public Present: Approximately 35

## **PUBLIC COMMENT**

There were no public comments.

Chairperson Zermeno asked whether the applicants were informed that they would need the concurrence of all four of the members to pass an item.

Planning Manager Anderly said they were all notified and each had decided to proceed.

## **AGENDA**

1. **Use Permit PL-2004-0176 – Hani Haddad (Applicant/Owner)** – Request for New Off-Sale Alcoholic Beverage Outlet Located Less Than 500 Feet From Another Outlet – The Project is located at 230 Jackson Street (State Route 92)
2. **Appeal of the Planning Director's Denial of Variance No. PL-2004-0117 – Dindo and Glenda Lahip (Applicants/Owners)** – Request for a Variance to Allow a 3-Foot 8-Inch Side Yard for a Patio Room Addition Where a 5-Foot Setback is Required – The Project is Located at 881 Saint Bede Lane
3. **Use Permit PL-2004-0010 – Alex Aguilar (Applicant) – Jim Morris (Owner)** – Request to Operate a Nightclub and Bar in Conjunction with a Restaurant and Bakery in the Central City Commercial Zoning District – The Project is Located at 22380 Foothill Boulevard, between Russell Way and San Lorenzo Creek

## **PUBLIC HEARINGS**

**1. Use Permit PL-2004-0176 – Hani Haddad (Applicant/Owner) – Request for New Off-Sale Alcoholic Beverage Outlet Located Less Than 500 Feet From Another Outlet – The Project is located at 230 Jackson Street (State Route 92)**

Associate Planner Emura described the ethnic food store, Crossroads World Market, and discussed the application for a new off-sale liquor license. He explained that the ABC had determined that there was an over concentration of licenses in the census tract. The applicant believes he should be granted a variance to carry specialty wines and beers to complement the food he carried in the store. Staff agreed to support the variance request since the right-of-way and the median is a physical which requires someone going by foot or car to travel over 500 feet. Associate Planner Emura noted 14 calls opposed to the use permit. Their reasons included over-concentration in the area, unequal treatment for others. He added that Commpre had requested a continuance since they received notification a week before the hearing. However, staff believes that if it were approved or denied, it would probably be appealed to the City Council.

Commissioner McKillop asked what was difference in this request from that made in 2002.

Associate Planner Emura said there was virtually no difference.

Chairperson Zermeño asked about the unequal treatment.

Associate Planner Emura explained that there was a concern as to whether the City of Hayward would interpret the concept of physical constraint for other businesses along Jackson Street as a justification for a variance as well.

The public hearing opened at 7:41 p.m.

Hani Haddad suggested that the past two years had seen Hayward change. He said he was happy to see Neumanali open up, since he felt they fall into the same category of specialty wine and beer. He was encouraged by Commpre not appealing an application four or five months ago. He said they work hard to provide convenience and necessity to their customers. The wine and beer are the only two items of the hundreds of things in the store that they provide for their ethnic customers. This is a specialty store. Hayward will soon be the standard in the Bay Area. Soon people will say, "What's good for Hayward will be good for other cities in the Bay Area." He announced that Palo Alto had invited them to bring their store to that city. They will be located on San Antonio. He noted that they are a food market and will not be a liquor store. He commented that liquor stores have nothing but liquor and bottles. He emphasized that they would like the license to provide more convenience for their customers.

Commissioner Sacks said she did go by and look at the store. She asked where the beer and wine would be located.

Mr. Haddad suggested it would be against the wall with the chocolates, an alternative would be to locate them among the olives, cheese and crackers but away from the doors and windows.

Commissioner Bogue asked about the square footage in the store, adding that he did speak to Mr. Haddad on the phone and also roamed through the store.



Mr. Haddad said they were shooting for half the amount of space of a normal retail store.

Commissioner McKillop said she had met Mr. Haddad about 20 years ago at Cal State where he had the falafel concession. She commented that the Crossroads Market is an amazing and remarkable place.

Lisa Taylor has known Mr. Haddad a number of years. She said she works in the store as well. Many of the customers give them a lot of feedback. A number of people from throughout the area drive great distances to come to this market. He started from small roots and is customer centered. This market is different. She emphasized his responsibility in maintaining this store saying he would be equally responsible in maintaining the wine and beer sales.

Diane Ferchel asked for this request to be met. She described the variety of foods available. She mentioned Mr. Haddad as an asset to the market and area.

Stephania Widger said she met Mr. Haddad when they were at Cal State and worked with him to keep his falafel stand. She said she has a large family and all their important events call for Greek wine. At this point the nearest outlet is in Modesto. She urged support for this application.

Linda Pratt, director of Commpre, emphasized their 15 years of service to Hayward and Alameda County. She noted that they were not informed of this item until late last week so they were not able to prepare a response. She added that community members were informed in April.

Commissioner McKillop said this application came up in 2002 and were they involved then.

Ms. Pratt said she could not comment since they had not seen this latest application.

Commissioner McKillop said it would most likely be appealed if passed.

Hank Duong, owner of County Liquors market across the street, had his daughter read his statement against the permit. Jackson Street does not create a buffer zone. He argued that Crossroad's Market was too close to his liquor store, emphasizing that the ABC says the census tract is over saturated at this point. One store has closed down but the license is being transferred. He said that imported beer and wine could be substitutable. The market is saturated.

Tony Meshal, a customer of Crossroads who lives in Dublin, said he thought most of the people who shop at Crossroad come there because they are not able find what they want somewhere else. Most of the customers come to find specialty items not carried in other supermarkets. He said he would like to shop for specialty wines from other countries at this store, noting that many families have their own traditions in which they use these.

Jorge Vieytes said he has known Hani Haddad for years. He said he shops at this market because of the prices and the merchandise. As of now, he goes to Trader Joe's in Castro Valley for his

wine although he would like to buy his wine at Crossroads in Hayward. This would be totally different from the liquor store. He emphasized that he would not shop at the Country liquor store for various reasons.

Commissioner Bogue asked Mr. Haddad for his thoughts regarding the Hayward Citizens for Responsible Liquor Outlets who asked whether he would be agreeable to their request of no 40 ounce malt liquor be available.

Mr. Haddad said he would agree with that condition, adding that this group is very good about going out into the field and checking on the outlets as to whether they are abiding by the rules. They are very effective and doing a good job for the community.

Chairman Zermeño asked about his selling gallons and cheaper twist-off top wines.

Mr. Haddad said those would not be available in his store. He noted that the prices would also be higher in his store.

The public hearing closed at 8:18 p.m.

Commissioner McKillop then asked staff whether the findings this time were different from two years ago.

Associate Planner Emura said the findings are the same.

Commissioner Sacks responded that the differences are described in the staff report, that there had been a liquor store closure in the area and the comparison with other stores.

Commissioner Sacks **moved**, seconded by Commissioner Bogue, to accept the staff recommendation. Commissioner Bogue asked to include the recommendations outlined in the letter from Hayward Citizens for Responsible Outlets. This was accepted into the motion.

Commissioner Sacks said she was very impressed with the comments made at this hearing. She was sorry Country Liquor is having a slow down in their business. However, she was very impressed with World Market adding that it is clean and nice looking. She believes that these are good people with a good heart. Although she commented that she, herself, does not drink this seems to be a reasonable request.

Commissioner McKillop said it is a wonderful and unique store. Hayward is very lucky to have it. She added that she agreed with the staff findings and would support the motion.

Commissioner Bogue said he agreed with the findings and that this is a unique store. He noted that this application has more conditions and designates a smaller space. There will be no advertising allowed making anyone aware of the alcohol on the premises. He commented on the shape and size of the Census tract noting where the concentration of alcoholic beverage outlets were in it. He added that this should probably be two tracts, given the size of it.



Chairperson Zermefio said he could not support this application, if this were just another liquor store. This is almost our Trader Joe's. It is unique in Hayward.

The motion **carried** by the following vote:

AYES:	COMMISSIONERS Sacks, McKillop, Bogue
	CHAIRPERSON Zermefio
NOES:	None
ABSENT:	Thnay, Fraas, One Vacancy
ABSTAIN:	None

2. **Appeal of the Planning Director's Denial of Variance No. PL-2004-0117 – Dindo and Glenda Lahip (Applicants/Owners) – Request for a Variance to Allow a 3-Foot 8-Inch Side Yard for a Patio Room Addition Where a 5-Foot Setback is Required – The Project is Located at 881 Saint Bede Lane**

Assistant Planner Koonze described the property noting its similarity to others in the area. He commented on an illegal room addition already on the property. He described the various illegalities of the present addition. The application was denied by the Planning Director on April 9. There is no special circumstance to justify the appeal.

The public hearing was opened at 8:30 p.m.

Dindo Lahip said he bought the house six years ago. At that time, he believed a permit had been issued to the former owner when the patio room was built. He enclosed the room and regrets that he did not apply for the proper permits. After the denial of the variance, he went through his neighborhood to see whether there were others with similar setback violations. He had pictures of a number of other violations in his area. He noted that he had made no substantial changes to the patio from that of the previous owner. He asked for re-consideration.

Commissioner Sacks asked what the pictures show.

Mr. Lahip explained that they are all similar setback violations to his property.

Chairperson Zermefio asked how difficult it would be to install a window to the outside to have the existing bedroom conform to UBC regulations.

Mr. Lahip said it would not be that difficult to comply with the City in this regard.

The public hearing closed at 8:37 p.m.

Commissioner Sacks said she was bothered by this since it seems there are a whole lot of violations in the neighborhood. This man bought a place with the illegal room. She asked what his recourse might be since he bought the house in good faith.

Assistant Planner Koonze explained that a building permit was not issued for the patio room which did not meet the codes at the time it was built.

Planning Manager Anderly added that at the time he purchased the home, it was only a patio cover, he enclosed it into a room without a permit.

Chairperson Zermefio asked whether staff had been out to his house and how difficult would it be to move the wall.

Assistant Planner Koonze said he would have to destroy the wall and move it back. They might be able to salvage the sliding door and the windows out and reinstall them.

Commissioner Bogue said he thought the building has to be setback. Without the full 5-feet, there are air and safety issue. If the wall is carefully taken down, it probably could be saved. He then moved, seconded by Commissioner Sacks, the staff recommendation to deny the variance.

Commissioner Bogue then added it would be appropriate to keep the 5-foot setback for safety reasons.

Commissioner McKillop said she felt for the applicant since he bought it with the patio cover. However, she could see no findings for the variance.

Commissioner Sacks agreed, adding she would hope the applicant would follow the suggestion to make it a legal structure. She also wished him luck.

Chairperson Zermefio said he would like to help but cannot. Perhaps the applicant could move the wall without tearing down the addition. He noted that the value of the home would increase with a legal structure.

The motion carried by the following vote:

AYES:	COMMISSIONERS Sacks, McKillop, Bogue
	CHAIRPERSON Zermefio
NOES:	None
ABSENT:	Thnay, Fraas, One Vacancy
ABSTAIN:	None

**3. Use Permit PL-2004-0010 – Alex Aguilar (Applicant) – Jim Morris (Owner) – Request to Operate a Nightclub and Bar in Conjunction with a Restaurant and Bakery in the Central City Commercial Zoning District – The Project is Located at 22380 Foothill Boulevard, between Russell Way and San Lorenzo Creek**

Associate Planner Pearson described the Nighclub/Restaurant proposal. Staff is recommending

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approval with findings and conditions. The general plan encourages this type of use downtown. The building permit has been issued for the re-facing of the building and the re-facing must be completed prior to the operation of the nightclub. Letters have been received opposing the project for reasons of noise, etc. Staff believes the conditions mitigate these potential problems.

Chairperson Zermeno asked when the re-facing would be done.

Associate Planner Pearson said to his knowledge the applicant is waiting for further funding. He said they would complete inside and outside, noting that three windows are proposed on the building exterior facing the creek.

Planning Manager Anderly said when the nightclub was last heard by the Planning Commission, re-facing had not yet been approved.

The public hearing opened at 8:51 p.m.

Alex Aguilar, the applicant, said they want a restaurant with entertainment. He said they feel that this is needed for this area of downtown. He described the entertainment, which would be available, noting that their emphasis would also be on security, which is very important. He said various family members would be working the business. He noted that the Planning Commission approved the former plan last year. However, this plan is a better project. He urged members to support it. It will bring a revival to that area.

Chairperson Zermeno asked whether he was okay with the conditions.

Mr. Aguilar said he would prefer the condition regarding alcohol being served until 1 a.m. be extended until 1:30 a.m. that would be more in keeping with other clubs in the area. As to the condition requiring no music before 9 p.m. He said on Sundays they plan to have dining and dancing so he was asking for 12 p.m. He would also like this available for Thursday, Friday, Saturday and Sunday as well.

Commissioner Bogue said the applicant talked about dining and dancing. If the buffet is on the dance floor, how is that possible?

Mr. Aguilar said they would stop the buffet at 4 p.m. and there would be no dancing before 9 p.m.

Commissioner Sacks said the plans speak favorably about a bakery. However, in looking at the layout there is simply one small circle.

Mr. Aguilar explained that there would be two ovens in the kitchen. It will not be a wholesale bakery. It's merely a customer service so there should be sufficient area.

David Travis, Cal State Assistant for Student Affairs, said they were looking at factors that might

have an impact on campus and off-campus. He was concerned by Mr. Aguilar's targeting of students at the college. This becomes a nightclub at 9 p.m. so there is a potential for underage drinking. He does not address how he would handle this. These issues are a concern. Since 98 percent of their students are commuters, they are working to keep drinking down. With the proposal of a 7-day operation and open late, they could not support this application for its negative effect on students.

Elaine Sunday, Hayward Citizens for Responsible Liquor Outlets, said as far as their organization is concerned the current plans have multiple problems. As to the polling that was done, it was done in a casual manner. Most of those polled were customers of Mr. Aguilar's Fremont club. As to the ratio of customers to servers, she thought 50:2 was not adequate. This is a high-risk business, although he claims there will be a restaurant and bakery, in reality it is a full service bar. He is just calling it a bakery is to move it along.

David Cota, Commpre, referred to the business plan as well as looking at the floor plan, commented that it was easy to see how much space would be devoted to food. He noted that 82 percent is located in the bar. He had samples of tables to illustrate that the tables to be used were not food tables.

Linda Pratt, Commpre, asked whether this was a bonafide restaurant or a nightclub. She noted the City definition in the ordinance for a nightclub. This is a request to operate nightclub and bar in conjunction with a restaurant. She then asked why staff was saying this is and is it not inconsistent with the ordinance. She then brought attention to the number of calls for service made to Mr. Aguilar's club in Fremont. From January through April, 2004, there were 10 calls for service. She thought it was disturbing that staff did not do this research and include it in the report.

Dennis Botelho said he had problems with the ordinance not being followed as written. He asked about the requirements for a bonafide restaurant and questioned whether this is a 47 license or 48. The ABC requires a 47 license as a bonafide restaurant.

Howard Beckman, Friends of San Lorenzo Creek, said he sent a letter explaining concern for patrons tossing things into the creek. He said they were asking for this proposed business owner to take responsibility for the creek to some extent. Use Permit process is public hearing. He said it was clear reading the proposal, that people would hang out there, noting it is a common condition to put in for places where there might be trash. The Alameda County Clean Water program is pouring a segment of its dollars into Hayward to increase public access.

Commissioner Sacks concurred saying she was taking the same position with all residents and businesses along the creek.

Mr. Beckman indicated that they would be holding meetings with the property owners along the creek.

Chairperson Zermeno said this was a commendable project.

Commissioner Bogue discussed the comments in various letters adding that many of the concerns were not answered. He also asked about a letter from the City of Fremont Police Department that



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cited a limited need for police calls and service, which is different from the list cited by Ms. Pratt. He asked for further information.

Planning Manager Anderly said she had called the police chief and visited the club. Mr. Aguilar had engaged a promoter who independently carried on these activities, which caused problems. Chief Steckler indicated that in Fremont Mr. Aguilar has been acting responsibly.

Chairperson Zermeno asked about the conditions required by the Hayward Police Department.

Acting Chief Lowe noted conditions 39 to 59, saying these conditions have answered most of their concerns. He added that their main concern is the peace and tranquility of Casa Sandoval and its elderly residents. This is why they are requesting the business to stop serving at one a.m., which will give patrons an hour to clear the parking lot and move on.

Commissioner Sacks commented that condition 49 speaks to minors. The applicant is asking for music starting at noon, would that affect this condition.

Acting Chief Lowe said no, their concern is that according to the plan, the actual nightclub entertainment is going to start at 9 p.m., which is why minors need to be out by that time.

Planning Manager Anderly clarified that by having a one a.m. closing time, there will not be that many people exiting the bars at the same time.

Commissioner McKillop asked whether Club Mango is strictly a nightclub. She then asked about Mexicali Rose and what license it operates under.

Acting Chief Lowe explained that it is a type 47 with similar conditions.

Commissioner McKillop asked whether this was supposed to be a 24-7 operation.

Mr. Aguilar said they wanted 24-7 but with conditions they will close at 2 a.m. and then reopen at 6 in the morning.

Chairperson Zermeno asked how they propose to control not serving minors.

Mr. Aguilar explained that after nine p.m., they will isolate the bar area and check id's. He said the wait staff will do training with ABC, plus they will have security id checks.

Commissioner Bogue said it sounds like minor would be allowed in the building.

Mr. Aguilar explained that during the day the facility will act like restaurant so that families can be together. After 9 p.m., they will isolate the areas with no minors allowed in the bar area.

Associate Planner Pearson noted that the condition also says only when there is an event taking place are there no minors allowed on the premises.

Commissioner Bogue said it might be difficult to determine on the spot. From noon on, there will be entertainment.

Commissioner Sacks asked when does the music become an event.

Mr. Aguilar explained that at night after 9 p.m. there would be no minors allowed. He explained that they are spending half a million on this facility so they are the first people interested in not losing their license. He said he has never had problems with underage customers. ABC has training to help identify customers who might be using drugs and seem underage.

Commissioner Sacks brought up the Friends of the Creek and raised a situation regarding cleanliness of the area. She asked what condition the Fremont Club is in, and what kind of condition this one would be kept in as well.

Mr. Aguilar explained that in Fremont the owner of the building has a person who maintains the place. Here they will have their own staff for cleaning as well as picking up any trash in the creek. One of the reason they are adding windows on that side of the building is to look toward the creek. They have a vested interest in keeping the creek clean.

Commissioner Bogue said he had gone to Club Mango's in Fremont but was there early and the club was not opened. He said he was not impressed with the exterior of the Fremont Club. Because of this concern, he stressed the reason for these conditions. He asked staff about condition 19, keeping the premises in a clean, well maintained condition. He noted that it does not mention picking up litter within a certain radius.

Planning Manager Anderly said he was correct that this type of picking up litter within 300 feet is typical of fast food restaurants since people take away their food and use paper products. This is not a typical environment. Mr. Aguilar has indicated a willingness to pick up trash.

Mr. Aguilar explained the incident in Fremont with the Police. The promoter changed the act without his knowledge. He has learned from his mistakes. He went to the Police Department and apologized and fired the promoter that morning.

The public hearing was closed at 9:42 p.m.

Chairperson Zermefio asked how many nightclubs there are in Hayward.

The Police Department said they do not have the number.

Both Chairperson Zermefio and Commissioner Bogue named Mexicali Rose as all they could think of.

Commissioner Sacks said she was looking for reasons not to approve this. Instead what has happened is that she heard excellent questions raised with the roles of the three organizations



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represented. Commpre, Hayward Citizens for Responsible Liquor Outlets, and Cal State. She said she agreed about concern with minors and alcohol. This is a different area. There are different cultures. College students who might want to drink will find a way to do so. This will not encourage underage customers. She then **moved**, seconded by Commissioner McKillop, to support the staff recommendation with the findings and conditions.

Commissioner Bogue expressed further concern about the operation. He fully supported closing at one p.m., and asked for friendly amendment to Condition 41 to include opening at 8 a.m. Condition 19 should also include the creek area. He said he was leery about some of the proposals for the Club. He then stressed conditions 60 and 61 regarding revocation.

Commissioner McKillop said she was excited to see new businesses in Hayward, particularly entertainment. She said she has reservations but with a lot of monitoring as a community, we can make this work. We will have to all work together. Mr. Aguilar says he is committed to creating a fine establishment. She addressed Mr. Aguilar saying he has a lot of work ahead of him.

Chairperson Zermefio said he was excited about the proposal, but there are safeguards. He thought supporting this business would work since none of the commissioners could come up with the name of more than one other nightclubs in Hayward. Our downtown will have an increase of places serving alcohol. This is because the downtown is being developed as a destination. The task for the non-alcohol groups is daunting but this is good for Hayward.

Commissioner Bogue emphasized that it will take the work of everyone not just the several groups in the City of Hayward. The four commissioners have to bear much of the responsibility for monitoring as well.

Commissioner Sacks thanked Commissioner Bogue for this reminder adding that the members live in Hayward and take their responsibility seriously in these matters.

The motion **carried** by the following vote:

AYES:	COMMISSIONERS Sacks, McKillop, Bogue
	CHAIRPERSON Zermefio
NOES:	None
ABSENT:	Thnay, Fraas, One Vacancy
ABSTAIN:	None

#### **ADDITIONAL MATTERS**

##### **4. Oral Report on Planning and Zoning Matters**

Planning Manager Anderly noted that the meeting on July 1 would be primarily for the downtown theatre project. She added that the City Council would also be interviewing candidates to fill the vacancy on the commission with the goal of having a new Planning Commission member seated by

July 8.

**5. Commissioners' Announcements, Referrals**

Commissioner Bogue discussed some of the problems to which he was referred at the Schafer Park Shopping Center. Trash was piled up in one location behind a store. He said they have gated the back of the Center although he could see trash bags at the location and suggested it be watched.

Chairperson Zermefio informed staff and members that he would not be available after July 24<sup>th</sup> since he would be leaving the country.

He then thanked the retiring secretary for her nine years of service to the City of Hayward and the Planning Commission.

**APPROVAL OF MINUTES**

- June 3, 2004 - APPROVED
- June 10, 2004 - APPROVED

**ADJOURNMENT**

The meeting was adjourned by Chairperson Zermefio at 10:01 p.m.

APPROVED:

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Christopher Thnay, Secretary  
Planning Commission

ATTEST:

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Edith Looney  
Commission Secretary